

**The Northern Ireland Authority for Utility Regulation**

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**LICENCE MODIFICATION NOTICE**

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In pursuance of its powers under Article 14(1) of the Electricity (Northern Ireland) Order 1992 as amended (“the Order”), the Northern Ireland Authority for Utility Regulation, having obtained the consent of Northern Ireland Electricity plc, and having given notice of its intention to make the modifications as proposed below, hereby modifies the licence to participate in the transmission of electricity issued to Northern Ireland Electricity plc under Article 10(1)(b) of the Order (the “Licence”) in the following manner:

**New Condition 43: Energy Efficiency and The Northern Ireland Sustainable Energy Programme**

- 1 The Licensee shall establish a fund (for such period and amount as may be specified in the Framework Document) (the “Fund”) for the purpose of subsidising the operation and delivery of improvement measures in accordance with an energy efficiency programme to be known as the Northern Ireland Sustainable Energy Programme (NISEP).
- 2 The Licensee shall establish and operate procedures for the making of payments from the Fund to any Participating Party or Programme Administrator in such manner and at such times as may be specified in accordance with any Payment Notice, provided that in any relevant year the Licensee shall not be required to make payments from the Fund which exceed the NISEP Total Amount for such year.
- 3 The Licensee shall fund its obligations under this Condition in accordance with the provisions of Annex 1.
- 4 The Licensee shall comply with any reasonable request for information made by the Authority in connection with this Condition.
- 5 The Licensee shall maintain at all times accurate and up to date records as to:
  - (a) the amount of money held within the Fund at any particular point in time;

- (b) any amounts paid to Participating Parties and Programme Administrators in each year (including the particular amounts paid as incentive payments as the same are provided pursuant to the Framework Document); and
- (c) any other reasonable and necessary costs incurred by the Licensee arising from the administration of the Fund.

6 In this Condition:

<b>“Framework Document”</b>	means the document entitled the Framework for Northern Ireland’s Energy Efficiency Levy Programme prepared by the Energy Saving Trust on behalf of the Authority dated September 2008 or any document which supersedes such document.
<b>“Fund”</b>	has the meaning given to it in paragraph 1.
<b>“NISEP”</b>	means the energy efficiency programme known as the Northern Ireland Sustainable Energy Programme which is designed to promote energy efficiency measures and/or the use of renewable technologies and is approved for the purposes of this Condition by the Authority (or any successor or alternative energy efficiency programme which the Authority may from time to time approve for the purposes of this Condition).
<b>“NISEP Total Amount”</b>	means the total amount of NISEP funding to be made available in any year as may be determined by the Authority in consultation with the Licensee.
<b>“Participating Party”</b>	means a supplier or other person who has the Authority’s approval to participate in, and receive funding from, the NISEP.
<b>“Payment Notice”</b>	means a notice or notices given by the Authority to the Licensee authorising the Licensee to either pay to one or more Participating Parties or the Programme Administrator a sum specified (or otherwise referred to) therein. Such notice shall take the form of, and contain the kinds of matters referred to in, the notice set out in the appendix to Annex 1;

**“Programme Administrator”** means any legal or natural person who has been appointed by the Authority for the purposes of administering on the Authority’s behalf part or all of the NISEP in the terms expressed in the Framework Document or any other contract or agreement concluded with that person.

**Annex 1 of the licence shall be modified as follows and shall include a new appendix;**

**Annex 1 – Determination of the PSO Charges**

Restriction on PSO Charges

- 1 The PSO Charges applicable from time to time shall be the charges determined as such by the Licensee, provided that in setting such charges, the Licensee shall use its best endeavours to ensure that, in any relevant year, the regulated PSO revenue does not exceed the maximum allowed PSO revenue (or, where the maximum allowed PSO revenue is a negative figure, the Licensee will use its best endeavours to ensure that, in the relevant year, it pays that amount to relevant persons under the PSO Agreements).

Maximum PSO Revenue

- 2 The maximum allowed PSO revenue, in respect of any relevant year (t), shall be calculated as follows:

$$M_{PSOt} = PPB_t + Supply_t + LB_t + D_t + K_t$$

Where:

$M_{PSOt}$  means the maximum allowed PSO revenue in the relevant year t.

$PPB_t$  means the PPB Amount for the relevant year t.

$Supply_t$  means the NIE Energy Supply Amount for the relevant year t.

$LB_t$  means the Land Bank Amount for the relevant year t.

$D_t$  means the excluded PSO costs (as defined in paragraph 3).

$K_t$  means the correction factor (whether a positive or a negative number) to be derived as follows:

$$K_t = (M_{PSOt-1} - R_{t-1}) * (1 + I_t/100)$$

where  $R_{t-1}$  is the revenue actually derived under the PSO Agreements in the relevant year immediately preceding the relevant year t, and  $I_t$  is the

Average Specified Rate. In relevant year t ending 31 March 2008,  $K_t$  shall be zero.

Excluded PSO Costs

- 3 Subject to paragraph 4, the following costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded PSO costs in relevant year t:

Energy Efficiency Programme

- (a) an amount being equal to the sum of the reasonable and necessary costs:
- (i) incurred by the Licensee in establishing the arrangements to implement any fund which the Licensee must establish and maintain in accordance with Condition 43 (the "Fund") for the purpose of subsidising the operation and delivery of improvement measures in accordance with an energy efficiency programme to be known as the NISEP (including, without limitation, the maintenance of all appropriate records of monies held and paid out); and
  - (ii) incurred by the Licensee in the making of payments from the Fund to any Participating Party or Programme Administrator as provided for in any payment notice, in accordance with operating procedures which it must also establish and maintain in order to facilitate the prompt payment from the Fund to a Participating Party or Programme Administrator;
- (b) an amount being equal to the sum of:
- (i) in respect of the relevant years following 1 April 2008, all amounts paid by the Licensee pursuant to payment notices for relevant year t; and
  - (ii) the Licensee's reasonable and necessary costs and expenses of administering the payments required under Payment Notices including interest incurred by the Licensee on such amounts, for relevant year t to the extent not covered in sub-paragraph (i) above;

Other Excluded Costs

- (c) any reasonable costs incurred by the Transmission and Distribution Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented to the extent such costs are approved by the Authority (whether such approval is given prior to or after the coming into effect of this Annex) and not recovered under any other part of the Licence;
  - (d) any reasonable costs incurred by the Transmission and Distribution Business in establishing and operating the arrangements to support the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation) including in providing those services provided by the Transmission and Distribution Business in its role as common service provider, to the extent such costs are approved by the Authority (whether such approval is given prior to or after the coming into effect of this Annex) and not recovered under any other part of the Licence;
  - (e) any amount that comes to be treated as Uncollected PSO Revenue in relevant year  $t$ , less any amount that is paid to the Licensee in that relevant year in respect of an amount that was previously treated as Uncollected PSO Revenue; and
  - (f) any other amounts not included in  $PPB_t$ ,  $Supply_t$ ,  $LB_t$  requested by the Licensee and approved by the Authority (whether such approval is given prior to or after the coming into effect of this Annex) in respect of relevant year  $t$ .
- 4 No cost incurred or revenues received by the Licensee shall be included in more than one of the categories referred to in paragraph 3, or under both this Annex 1 and Annex 2, and no amounts shall be included in paragraph 3 to the extent that such amounts are recovered under the NIE Energy Supply Licence or otherwise under the Licence or any other licence held by any affiliate or related undertaking of the Licensee.

#### Miscellaneous

- 5 Restriction of PSO Charges: adjustments

- (a) If, in respect of any relevant year, the regulated PSO revenue exceeds the maximum allowed PSO revenue by more than the permitted one-year percentage, the Licensee shall furnish an explanation to the Authority and in the next following relevant year the Licensee shall not effect any increase in the PSO Charges unless it has demonstrated to the reasonable satisfaction of the Authority that the regulated PSO revenue would not be likely to exceed the maximum allowed PSO revenue in that next following relevant year.
- (b) If, in respect of any 3 successive relevant years, the sum of the amounts by which the regulated PSO revenue has exceeded the maximum allowed PSO revenue is more than the permitted 3-year percentage, then in the next following relevant year the Licensee shall, if required by the Authority, adjust its PSO Charges such that the regulated PSO revenue would not be likely, in the judgment of the Authority, to exceed the maximum allowed PSO revenue in that next following relevant year.
- (c) In this paragraph:
- |  |  |
|--|--|
| <b>“permitted one-year percentage”</b> | means 4 per cent of the maximum allowed PSO revenue; and                                 |
| <b>“permitted 3-year percentage”</b>   | means 5 per cent of the maximum allowed PSO revenue in the second of the relevant years. |

## 6 Information to be provided to the Authority

- (a) Where any change is intended to be made in the PSO Charges, the Licensee shall not later than the time referred to in paragraph 6(b) provide the Authority with:
- a written forecast of the maximum allowed PSO revenue, together with its components, in respect of the relevant year  $t$  in which such change is to take effect and in respect of the next following relevant year  $t + 1$ ;
  - a written estimate of the maximum allowed PSO revenue, together with its components, in respect of the relevant year  $t-1$  immediately

preceding the relevant year in which the change is to take effect unless a statement complying with paragraph 6(f) in respect of relevant year t-1 has been furnished by the Licensee to the Authority before the time referred to in paragraph 6(b).

- (b) The relevant time referred to in paragraph 6(a) is 14 days prior to the date of publication of such charges.
- (c) If within 3 months of the commencement of any relevant year t the Licensee has not provided the aforementioned forecasts pursuant to paragraph 6(a) for the purpose of such changes in charges as are referred to in paragraph 6(a), the Licensee shall forthwith provide the Authority with a written forecast of the maximum allowed PSO revenue (together with its components) in respect of relevant year t.
- (d) The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 6(a) or 6(c) shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis and the Licensee shall comply with any such directions.
- (e) Not later than 6 weeks after the commencement of each relevant year t, the Licensee shall send to the Authority a statement as to:
  - (i) whether or not the provisions of paragraph 5 are likely to be applicable in consequence of the regulated PSO revenue in the preceding relevant year t-1 or the 3 preceding relevant years t-1, t-2 and t-3; and
  - (ii) its best estimate as to the relevant correction factor  $K_t$  calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum allowed PSO revenue in respect of relevant year t.
- (f) Not later than 3 months after the end of each relevant year the Licensee shall send to the Authority a statement, in respect of that relevant year, showing the specified items referred to in paragraph 6(h).

- (g) The statement referred to in the preceding paragraph shall be:
- (i) accompanied by a report from the Auditors that in their opinion:
    - (A) such statement fairly presents each of the specified items referred to in paragraph 6(h) in accordance with this Annex; and
    - (B) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been maintained in accordance with Condition 2; and
  - (ii) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:
    - (A) there is no amount included in its calculations under paragraph 2 which represents other than an amount permitted to be included under this Annex;
    - (B) all amounts which should properly be taken into account for the purposes of this Annex have been taken into account.
- (h) The specified items to be contained in the statement referred to in paragraph 6(f) shall be the following:
- (i) the regulated PSO revenue;
  - (ii) the maximum allowed PSO revenue;
  - (iii) the PPB Amount and the NIE Energy Supply Amount;
  - (iv) the Land Bank Amount;
  - (v) any excluded PSO cost, being  $D_t$  calculated as provided under paragraph 2; and
  - (vi) such other items as shall be specified in directions issued by the

Authority from time to time for the purposes of this Annex.

**7 Duration of Restriction**

- (a) This Annex shall apply so long as the Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a disapplication request made in accordance with paragraph 7(b) and:

  - (i) the Authority agrees in writing to the disapplication request; or
  - (ii) their application (in whole or in part) is terminated by notice given by the Licensee in accordance with either paragraph 7(d) or paragraph 7(e).
- (b) A disapplication request pursuant to paragraph 7(a) shall (i) be in writing addressed to the Authority, (ii) specify this Annex (or any part or parts thereof) to which the request relates; and (iii) state the date (being not earlier than the date referred to in paragraph 7(c)) from which the Licensee wishes the Authority to agree that the Annex or specified part or parts thereof shall cease to have effect (hereafter referred to as the disapplication date).
- (c) Save where the Authority agrees otherwise, no disapplication following delivery of a disapplication request pursuant to this paragraph 7 shall have effect earlier than the date which is the later of:

  - (i) the date occurring 18 months after delivery of the disapplication request; and
  - (ii) 31 March 2002.
- (d) If the Authority has not made a reference to the Competition Commission under Article 15 of the Order relating to the modification of this Annex before the beginning of 12 months which will end with the disapplication date, the Licensee may deliver written notice to the Authority terminating the application of this Annex (or any part or parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.

- (e) If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this Annex (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of this Annex or the specified part or parts thereof, in whole or in part, operate or may be expected to operate against the public interest, the Licensee may within 30 days after the publication of the report by the Authority in accordance with Article 16 of the Order deliver to it written notice terminating the application of this Annex or the specified part or parts thereof (as applicable) with effect from the disapplication date or a later date.
- (f) A disapplication request or notice served under this paragraph 7 may be served in respect of a specified geographic area.

#### Unit Coverage

- 8 The maximum allowed PSO revenue (or certain parts of the maximum allowed PSO revenue) can potentially be recovered from the quantity entering the total system in the authorised transmission area and from Wheeled Units. The final decision regarding which units in particular the maximum allowed PSO revenue (or certain parts of the maximum allowed PSO revenue) will be recovered from in relevant year t (“unit coverage”) rests with the Authority. In each relevant year t on the decision of the Authority regarding unit coverage of the PSO Charge, the Licensee will then draw up for the relevant year t the schedule of PSO Charges in accordance with Condition 24A in a manner which is consistent with the decision of the Authority regarding unit coverage. If the Licensee draws up for relevant year t the schedule of PSO Charges in accordance with Condition 24A in a manner which is not consistent with the decision of the Authority regarding unit coverage then the Authority’s approval under Condition 24A for the form of this schedule will not be granted.

#### Definitions

- 9 In this Annex, unless the context otherwise requires:

**“Average Specified Rate”** means the arithmetic mean of the daily base rates of Northern Bank Limited (or such other bank as the Authority shall specify from time to

time) current from time to time during the period in respect of which the calculation falls to be made.

<b>“NISEP”</b>	has the meaning given to that expression in Condition 43;
<b>“Fund”</b>	has the meaning given to that term in paragraph 3(a);
<b>“Land Bank Amount”</b>	has the meaning given to that expression in Condition 23.
<b>“maximum allowed PSO revenue”</b>	means the amount calculated as such in accordance with paragraph 2.
<b>“NIE Energy Supply Amount”</b>	means the amount determined as such in accordance with annex 1 of the NIE Energy Supply Licence.
<b>“Participating Party”</b>	has the meaning given to that expression in Condition 43.
<b>“Payment Notice”</b>	has the meaning given to that expression in Condition 43.
<b>“PPB Amount”</b>	means the amount determined as such in accordance with annex 3 of the NIE Energy Supply Licence.
<b>“Programme Administrator”</b>	has the meaning given to that expression in Condition 43.
<b>“PSO Agreements”</b>	means the agreements of that name established pursuant to Condition 24A.

- “regulated PSO revenue”** means the revenue (measured on an accruals basis) derived under the PSO Agreements (after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived).
- “relevant persons”** has the meaning given to that expression in Condition 24A.
- “relevant year”** means a financial year of the Licensee.
- “supplier”** means the holder of an electricity supply licence granted pursuant to Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992; or the holder of a gas licence pursuant to Article 8(1)(c) of the Gas (Northern Ireland) Order 1996.
- “Uncollected PSO Revenue”** means any amount owed to the Licensee under the PSO Agreements, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with its payment security policy referred to in paragraph 1) to be unrecoverable before the expiry of that six-month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated, in both cases, in accordance with such payment security policy).
- “Wheeled Unit”** means a kilowatt hour of electricity (whether generated inside or outside of Northern Ireland)



which enters the total system at any point and is delivered to a place outside Northern Ireland.

## Appendix to Annex 1

### Form of Payment Notice

To: Northern Ireland Electricity plc  
NISEP Fund Administrator  
Fortwilliam House  
Edgewater Office Park  
Edgewater Road  
Belfast  
BT3 9JQ

For the attention of [            ]

[Date]

Dear Sir/Madam

Payment Notice in respect of the Northern Ireland Sustainable Energy Programme (“NISEP”)

1. This Payment Notice is given by the Authority pursuant to Condition 43 of the licence to participate in transmission granted to Northern Ireland Electricity plc (“NIE”). Accordingly, a number of defined terms from that Condition are taken to have the same meaning as they have in that Condition for the purpose of this Payment Notice.
2. In this Payment Notice:  
  
“Adjustment” means any change to a previous payment notice including instructions to increase or reduce amounts paid or in respect of refunds made by participating parties to the programme  
  
“Applicable Year” means the year ending [INSERT]  
  
“NISEP Projects” means projects approved by the Authority and designed to promote energy efficiency measures and/or the use of renewable technologies pursuant to NISEP
3. The Authority hereby gives notice to NIE to pay *[insert name]* as [a Participating Party]/[Programme Administrator]<sup>\*</sup> [a sum] / [an Adjustment]<sup>\*</sup> in the amount of £*[insert amount]* for the purpose of NISEP Projects in the Applicable Year (such amount shall relate to project/scheme costs/incentive payments/programme administrator costs/).
4. Payment to the [Participating Party]/[Programme Administrator]<sup>\*</sup> identified in paragraph 3 of this Payment Notice shall be made [in advance] / [in arrears]<sup>\*</sup> by

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<sup>\*</sup> Delete as applicable



[single lump sum payment]/[by way of separate instalments to be paid in accordance with the following payment schedule]:

Month/Date	£
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]

- 5. NIE is hereby authorised to treat the payments made pursuant to this Payment Notice as excluded PSO costs for the purposes of Annex 1 of its licence.

.....  
 [Regulatory Manager/Director /CEO of NIAUR....insert name]  
 The Northern Ireland Authority for Utility Regulation

**The above noted modifications will take effect from Wednesday 26 August 2009.**

**Iain Osborne**  
 Chief Executive Officer  
 Authorised on behalf of the  
 Northern Ireland Authority for Utility Regulation